

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF MARYLAND  
(GREENBELT DIVISION)**

IN RE:	)	BANKR.NO. 03-30102-PM
	)	
FIRSTPAY, INC.	)	
	)	CHAPTER 7
DEBTOR.	)	
_____	)	
MICHAEL G. WOLFF, TRUSTEE	)	
	)	
	)	
PLAINTIFF,	)	ADVERSARY NO. 05-1179-PM
	)	
v.	)	
	)	
MBNA AMERICA BANK DELAWARE	)	
	)	
DEFENDANT.	)	
_____	)	

**DEFENDANT'S ANSWER TO TRUSTEE'S  
COMPLAINT FOR AVOIDANCE AND RECOVERY  
OF FRAUDULENT CONVEYANCES AND PREFERENCES**

COMES NOW, MBNA; (hereinafter "Defendant or MBNA"), by and through its undersigned counsel, and Answers the Plaintiff's Complaint filed in the above-captioned action as follows:

**PARTIES**

1. Admitted.
2. Admitted.
3. Admitted.

**THE PARTIES**

4. Admitted.
5. Admitted.
6. Admitted.

7. Admitted.

**FACTUAL BACKGROUND**

8. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied.

9. Admitted.

10. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied.

11. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied.

12. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied.

**COUNT I**

13. Answers to paragraphs 1 through 12 are hereby realleged and incorporated herein as though same were fully set forth at length.

14. Denied. The averments contained in this paragraph contain conclusions of law to which no response is required herein.

15. Denied. The averments contained in this paragraph contain conclusions of law to which no response is required herein.

16. Denied. The averments contained in this paragraph contain conclusions of law to which no response is required herein.

**WHEREFORE**, Defendant prays this Honorable Court to enter Judgment in its favor and against Plaintiff and/or Dismiss Plaintiff's Complaint with Prejudice, award Defendant costs and attorneys' fees, and any other such relief as the this Honorable Court deems equitable and just.

### **COUNT II**

17. Answers to paragraphs 1 through 16 are hereby realleged and incorporated herein as though same were fully set forth at length.

18. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied.

19. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied.

**WHEREFORE**, Defendant prays this Honorable Court to enter Judgment in its favor and against Plaintiff and/or Dismiss Plaintiff's Complaint with Prejudice, award Defendant costs and attorneys' fees, and any other such relief as the this Honorable Court deems equitable and just.

### **COUNT III**

20. Answers to paragraphs 1 through 19 are hereby realleged and incorporated herein as though same were fully set forth at length.

21. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied.

22. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied.

**WHEREFORE**, Defendant prays this Honorable Court to enter Judgment in its favor and against Plaintiff and/or Dismiss Plaintiff's Complaint with Prejudice, award Defendant costs and attorneys' fees, and any other such relief as the this Honorable Court deems equitable and just.

#### **COUNT IV**

23. Answers to paragraphs 1 through 22 are hereby realleged and incorporated herein as though same were fully set forth at length.

24. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied. The averments contained in this paragraph also contain conclusions of law to which no response is required herein.

25. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied. To the extent, if at all, that the allegations contained in this Paragraph of Plaintiff's Complaint allege conduct on the part of the Defendant, those allegations are denied. The averments contained in this paragraph also contain conclusions of law to which no response is required herein.

**WHEREFORE**, Defendant prays this Honorable Court to enter Judgment in its favor and against Plaintiff and/or Dismiss Plaintiff's Complaint with Prejudice, award Defendant costs and attorneys' fees, and any other such relief as the this Honorable Court deems equitable and just.

**COUNT V**

26. Answers to paragraphs 1 through 25 are hereby realleged and incorporated herein as though same were fully set forth at length.

27. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied. The averments contained in this paragraph also contain conclusions of law to which no response is required herein.

28. Denied. The averments contained in this paragraph contain conclusions of law to which no response is required herein.

29. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied.

30. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied. The averments contained in this paragraph also contain conclusions of law to which no response is required herein.

31. Denied. The averments contained in this paragraph contain conclusions of law to which no response is required herein.

32. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied. To the extent, if at all, that the allegations contained in this Paragraph of Plaintiff's Complaint allege conduct on the part of the Defendant, those allegations are denied. The averments contained in this paragraph also contain conclusions of law to which no response is required herein.

33. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied. The averments contained in this paragraph also contain conclusions of law to which no response is required herein.

34. Denied. The averments contained in this paragraph contain conclusions of law to which no response is required herein.

35. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied.

36. Denied. The averments contained in this paragraph contain conclusions of law to which no response is required herein.

37. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied.

38. Denied. The averments contained in this paragraph contain conclusions of law to which no response is required herein.

**WHEREFORE**, Defendant prays this Honorable Court to enter Judgment in its favor and against Plaintiff and/or Dismiss Plaintiff's Complaint with Prejudice, award Defendant costs and attorneys' fees, and any other such relief as the this Honorable Court deems equitable and just.

**COUNT VI**

39. Answers to paragraphs 1 through 38 are hereby realleged and incorporated herein as though same were fully set forth at length.

40. Denied. The averments contained in this paragraph contain conclusions of law to which no response is required herein.

41. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied. To the extent, if at all, that the allegations contained in this Paragraph of Plaintiff's Complaint allege conduct on the part of the Defendant, those allegations are denied. The averments contained in this paragraph also contain conclusions of law to which no response is required herein.

42. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied. To the extent, if at all, that the allegations contained in this Paragraph of Plaintiff's Complaint allege conduct on the part of the Defendant, those allegations are denied. The averments contained in this paragraph also contain conclusions of law to which no response is required herein.

43. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied. The averments contained in this paragraph also contain conclusions of law to which no response is required herein.

44. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied.

45. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied. To the extent, if at all, that the allegations contained in this Paragraph of Plaintiff's Complaint allege conduct on the part of the Defendant, those allegations are denied. The averments contained in this paragraph also contain conclusions of law to which no response is required herein.

**WHEREFORE**, Defendant prays this Honorable Court to enter Judgment in its favor and against Plaintiff and/or Dismiss Plaintiff's Complaint with Prejudice, award Defendant costs and attorneys' fees, and any other such relief as the this Honorable Court deems equitable and just.

#### **COUNT VII**

46. Answers to paragraphs 1 through 45 are hereby realleged and incorporated herein as though same were fully set forth at length.



47. Denied. Defendant is without knowledge or information sufficient to form a belief as to the truth or falsity of the factual averments contained in this paragraph of Plaintiff's Complaint and same are, therefore, denied. To the extent, if at all, that the allegations contained in this Paragraph of Plaintiff's Complaint allege conduct on the part of the Defendant, those allegations are denied. The averments contained in this paragraph also contain conclusions of law to which no response is required herein.

**WHEREFORE**, Defendant prays this Honorable Court to enter Judgment in its favor and against Plaintiff and/or Dismiss Plaintiff's Complaint with Prejudice, award Defendant costs and attorneys' fees, and any other such relief as the this Honorable Court deems equitable and just.

### **AFFIRMATIVE DEFENSES**

#### **FIRST AFFIRMATIVE DEFENSE**

The debtor received reasonably equivalent value in exchange for the transfers identified in the Plaintiff's Amended Complaint.

#### **SECOND AFFIRMATIVE DEFENSE**

To the extent that MBNA received the transfers identified in the Amended Complaint, it took the transfers in exchange for value and in good faith.

#### **THIRD AFFIRMATIVE DEFENSE**

The transfer(s) identified in Plaintiff's Amended Complaint were intended by Debtor and Defendant to be a contemporaneous exchange for new value given to the Debtor and were in fact substantially contemporaneous. This new value includes, but is not limited to, continued access to charging privileges and actual charges incurred on the account.

#### **FOURTH AFFIRMATIVE DEFENSE**

Following the transfer(s) that are identified in Plaintiff's Amended Complaint, Debtor incurred significant charges on the subject account(s) with Defendant, which charges constitute subsequent new value pursuant to 11 U.S.C. §547(c)(4).

**FIFTH AFFIRMATIVE DEFENSE**

The transfer(s) identified in Plaintiff's Amended Complaint were in payment of a debt or debts incurred by Debtor in the ordinary course of business of the Debtor and Defendant and were made according to ordinary business terms.

**SIXTH AFFIRMATIVE DEFENSE**

The transfers identified in the Plaintiff's Amended Complaint were not made with actual intent to hinder, delay or defraud any entity.

**SEVENTH AFFIRMATIVE DEFENSE**

The debtor was not insolvent at the time of one or more of the transfers identified in Plaintiff's Amended Complaint and / or was not rendered insolvent by such transfer(s).

**EIGHTH AFFIRMATIVE DEFENSE**

The transfers identified in the Plaintiff's Amended Complaint was not a transfer of an interest of the debtor.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff's Amended Complaint should be dismissed for accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations (bar date), waiver, insufficiency of process, insufficiency of service of process, failure to state a claim upon which relief can be granted, failure to join a party pursuant to Rule 7019.

Respectfully submitted,

Date: \_\_05/06/2005\_\_

By: \_\_\_\_\_/s/\_\_\_\_\_

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